

Board of Selectmen

April 26, 1994

Minutes

The meeting was called to order at the Elementary School Teachers Room at 6:09 p.m. by Chairwoman Carolina Kiggins. Selectmen present included John Ryerson, Barbara Fegan, Robert S. Costa and David Ernst. Town Administrator, Julia Enroth, and Town Counsel, Michael Ford, also attended.

The first item addressed by the Board was an information session by Town Counsel regarding the recent Massachusetts Supreme Court decision in the Pazolt/LaForte case regarding the public right to conduct aquaculture on private tidelands. Chairwoman Kiggins recused herself and turned the meeting over to Vice Chairman Ryerson. Selectman Ernst asked if he should recuse himself since he holds a shellfish grant; Town Counsel advised that it would not be necessary since this meeting was for informational purposes only. Discussion included:

- a) a review by Town Counsel of the history leading up to the decision
- b) a synopsis by Town Counsel of the opinion - the Board of Selectmen cannot issue grants on private property or tidelands without the permission of the upland landowner except to dig and take shellfish.
- c) options:
 - 1) analyzing grants in relation to length of operation and state prescriptive rights (adverse possession to private land)
 - 2) establish agreement between the upland landowner and the grant holders
 - 3) legislative solutions - possibly amend Chapter 30, Section 57
 - 4) ensure that grants are not located in private tidelands
 - 5) appeal to higher court - Town Counsel indicated that this is a property rights issue not a constitutional issue - therefore an appeal would not be appropriate
- d) the fourteen day period to file a petition for rehearing on right of possession issue
- e) legal consent - consent from property owners must be in writing and include a source of title (copy of deed)
- f) possibility of easements being granted to the Town to permit aquaculture
- g) rethinking waterfront property assessments for tax purposes
- h) taking flats by eminent domain - Town would have to pay full and fair market value

The Board discussed with Town Counsel the pending appointments to the Board of Fire Engineers. The Board asked if there were any requirement that the appointment or reappointment to the Board of Fire Engineers must be made before April 30th, the date of expiration for the terms. Town Counsel indicated that the current members could continue to serve until the new appointments are made. There was a consensus of the Board to make the appointments to the two expiring terms on the Board of Fire Engineers after the

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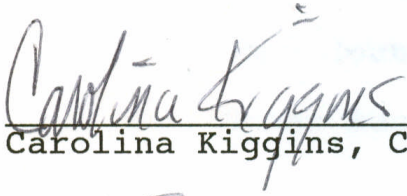
new members of the Board of Selectmen are elected.

The meeting adjourned at 6:55 p.m.

Respectfully submitted,



Linda Smulligan
Administrative Assistant



Carolina Kiggins, Chr. John Ryerson

Barbara Fegan



Robert S. Costa

David Ernst